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UNITED NATIONS CONFERENCE
ON THE LIABILITY OF OPERATORS
OF TRANSPORT TERMINALS IN
INTERNATIONAL TRADE
Vienna, 2-19 April 1991

TEXT OF A DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE APPROVED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW*

*See the report of the United Nations Commission on International Trade Law on the work of its twenty-second session (1989), Official Records of the General Assembly, Forty-fourth Session, Supplement No. 17 (A/44/17), chap. II, para. 225. The text of the draft Convention is set forth in annex I to that report. For the action taken by the General Assembly, see its resolution 44/33 of 4 December 1989, the relevant portions of which are reproduced in document A/CONF.152/1.

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DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

Article 1

Definitions

In this Convention:

(a) "Operator of a transport terminal" (hereinafter referred to as "operator") means a person who, in the course of his business, undertakes to take in charge goods involved in international carriage in order to perform or to procure the performance of transport-related services with respect to the goods in an area under his control or in respect of which he has a right of access or use. However, a person shall not be considered an operator whenever he is responsible for the goods under applicable rules of law governing carriage;

(b) Where goods are consolidated in a container, pallet or similar article of transport or where they are packed, "goods" includes such article of transport or packaging if it was not supplied by the operator;

(c) "International carriage" means any carriage in which the place of departure and the place of destination are identified as being located in two different States when the goods are taken in charge by the operator;

(d) "Transport-related services" includes such services as storage, warehousing, loading, unloading, stowage, trimming, dunnaging and lashing;

(e) "Notice" means a notice given in a form which provides a record of the information contained therein;

(f) "Request" means a request made in a form which provides a record of the information contained therein.

Article 2

Scope of application

(1) This Convention applies to transport-related services performed in relation to goods which are involved in international carriage:

(a) When the transport-related services are performed by an operator whose place of business is located in a State Party, or

(b) When the transport-related services are performed in a State Party, or

(c) When, according to the rules of private international law, the transport-related services are governed by the law of a State Party.

(2) If the operator has more than one place of business, the place of business is that which has the closest relationship to the transport-related services as a whole.

(3) If the operator does not have a place of business, reference is to be made to the operator's habitual residence.

Article 3

Period of responsibility

The operator shall be responsible for the goods from the time he has taken them in charge until the time he has handed them over to or has placed them at the disposal of the person entitled to take delivery of them.

Article 4

Issuance of document

(1) The operator may, and at the customer's request shall, within a reasonable period of time, at the option of the operator, either:

(a) Acknowledge his receipt of the goods by signing and dating a document presented by the customer that identifies the goods, or

(b) Issue a signed document identifying the goods, acknowledging his receipt of the goods and the date thereof, and stating their condition and quantity in so far as they can be ascertained by reasonable means of checking.

(2) If the operator does not act in accordance with either subparagraph (a) or (b) of paragraph (1), he is rebuttably presumed to have received the goods in apparent good condition. No such presumption applies when the services performed by the operator are limited to the immediate transfer of the goods between means of transport.

(3) The document referred to in subparagraph (b) of paragraph (1) may be issued in any form which preserves a record of the information contained therein.

(4) The signature on the document referred to in paragraph (1) may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means, if not inconsistent with the law of the country where the document is signed.

Article 5

Basis of liability

(1) The operator is liable for loss resulting from loss of or damage to the goods, as well as for delay in handing over the goods, if the occurrence which caused the loss, damage or delay took place during the period of the operator's responsibility for the goods as defined in article 3, unless he proves that he, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services took all measures that could reasonably be required to avoid the occurrence and its consequences.

(2) Where a failure on the part of the operator, his servants, agents or other persons of whose services the operator makes use for the performance of the transport-related services to take the measures referred to in paragraph (1) combines with another cause to produce loss, damage or delay, the operator is liable only to the extent that the loss resulting from such loss, damage or delay is attributable to that failure, provided that the operator proves the amount of the loss not attributable thereto.

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(3) Delay in handing over the goods occurs when the operator fails to hand them over to or place them at the disposal of a person entitled to take delivery of them within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time after receiving a request for the goods by such person.

(4) If the operator fails to hand over the goods to or place them at the disposal of a person entitled to take delivery of them within a period of 30 consecutive days after the date expressly agreed upon or, in the absence of such agreement, within a period of 30 consecutive days after receiving a request for the goods by such person, a person entitled to make a claim for the loss of the goods may treat them as lost.

Article 6

Limits of liability

(1) (a) The liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [8.33] units of account per kilogram of gross weight of the goods lost or damaged.

(b) However, if the goods are handed over to the operator immediately after carriage by sea or by inland waterways, or if the goods are handed over, or are to be handed over, by him for such carriage, the liability of the operator for loss resulting from loss of or damage to goods according to the provisions of article 5 is limited to an amount not exceeding [2.75] units of account per kilogram of gross weight of the goods lost or damaged. For the purposes of this paragraph, carriage by sea or by inland waterways includes pick-up and delivery within a port.

(2) The liability of the operator for delay in handing over the goods according to the provisions of article 5 is limited to an amount equivalent to two and a half times the charges payable to the operator for his services in respect of the goods delayed, but not exceeding the total of such charges in respect of the consignment of which the goods were a part.

(3) In no case shall the aggregate liability of the operator under both paragraphs (1) and (2) exceed the limitation which would be established under paragraph (1) for total loss of the goods in respect of which such liability was incurred.

(4) The operator may agree to limits of liability exceeding those provided for in paragraphs (1), (2) and (3).

Article 7

Application to non-contractual claims

(1) The defences and limits of liability provided for in this Convention apply in any action against the operator in respect of loss of or damage to the goods, as well as delay in handing over the goods, whether the action is founded in contract, in tort or otherwise.

(2) If such an action is brought against a servant or agent of the operator, or against another person of whose services the operator makes use for the

performance of the transport-related services, such servant, agent or person, if he proves that he acted within the scope of his employment or engagement by the operator, is entitled to avail himself of the defences and limits of liability which the operator is entitled to invoke under this Convention.

(3) Except as provided in article 8, the aggregate of the amounts recoverable from the operator and from any servant, agent or person referred to in the preceding paragraph shall not exceed the limits of liability provided for in this Convention.

Article 8

Loss of right to limit liability

(1) The operator is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of the operator himself or his servants or agents done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

(2) Notwithstanding the provision of paragraph (2) of article 7, a servant or agent of the operator or another person of whose services the operator makes use for the performance of the transport-related services is not entitled to the benefit of the limitation of liability provided for in article 6 if it is proved that the loss, damage or delay resulted from an act or omission of such servant, agent or person done with the intent to cause such loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 9

Special rules on dangerous goods

If dangerous goods are handed over to an operator without being marked, labelled, packaged or documented in accordance with any law or regulation relating to dangerous goods applicable in the country where the goods are handed over and if, at the time the goods are handed over to him, the operator does not otherwise know of their dangerous character, he is entitled:

(a) To take all precautions the circumstances may require, including, when the goods pose an imminent danger to any person or property, destroying the goods, rendering them innocuous, or disposing of them by any other lawful means, without payment of compensation for damage to or destruction of the goods resulting from such precautions, and

(b) To receive reimbursement for all costs incurred by him in taking the measures referred to in subparagraph (a) from the person who failed to meet any obligation under such applicable law or regulation to inform him of the dangerous character of the goods.

Article 10

Rights of security in goods

(1) The operator has a right of retention over the goods for costs and claims which are due in connection with the transport-related services performed by

him in respect of the goods during the period of his responsibility for them. However, nothing in this Convention shall affect the validity under the applicable law of any contractual arrangements extending the operator's security in the goods.

(2) The operator is not entitled to retain the goods if a sufficient guarantee for the sum claimed is provided or if an equivalent sum is deposited with a mutually accepted third party or with an official institution in the State where the operator has his place of business.

(3) In order to obtain the amount necessary to satisfy his claim, the operator is entitled, to the extent permitted by the law of the State where the goods are located, to sell all or part of the goods over which he has exercised the right of retention provided for in this article. The preceding sentence does not apply to containers, pallets or similar articles of transport or packaging which are owned by a party other than the carrier or the shipper and which are clearly marked as regards ownership except in respect of claims by the operator for the cost of repairs of or improvements to the containers, pallets or similar articles of transport or packaging.

(4) Before exercising any right to sell the goods, the operator shall make reasonable efforts to give notice of the intended sale to the owner of the goods, the person from whom the operator received them and the person entitled to take delivery of them from the operator. The operator shall account appropriately for the balance of the proceeds of the sale in excess of the sums due to the operator plus the reasonable costs of the sale. The right of sale shall in all other respects be exercised in accordance with the law of the State where the goods are located.

Article 11

Notice of loss, damage or delay

(1) Unless notice of loss or damage, specifying the general nature of the loss or damage, is given to the operator not later than the third working day after the day when the goods were handed over by the operator to the person entitled to take delivery of them, the handing over is *prima facie* evidence of the handing over by the operator of the goods as described in the document issued by the operator pursuant to paragraph (1)(b) of article 4 or, if no such document was issued, in good condition.

(2) Where the loss or damage is not apparent, the provisions of paragraph (1) apply correspondingly if notice is not given to the operator within 15 consecutive days after the day when the goods reached the final recipient, but in no case later than 60 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

(3) If the operator participated in a survey or inspection of the goods at the time when they were handed over to the person entitled to take delivery of them, notice need not be given to the operator of loss or damage ascertained during that survey or inspection.

(4) In the case of any actual or apprehended loss of or damage to the goods, the operator and the person entitled to take delivery of the goods shall give all reasonable facilities to each other for inspecting and tallying the goods.

(5) No compensation shall be payable for loss resulting from delay in handing over the goods unless notice has been given to the operator within 21 consecutive days after the day when the goods were handed over to the person entitled to take delivery of them.

Article 12

Limitation of actions

(1) Any action under this Convention is time-barred if judicial or arbitral proceedings have not been instituted within a period of two years.

(2) The limitation period commences:

(a) On the day the operator hands over the goods or part thereof to, or places them at the disposal of, a person entitled to take delivery of them, or

(b) In cases of total loss of the goods, on the day the operator notifies the person entitled to make a claim that the goods are lost, or on the day that person may treat the goods as lost in accordance with paragraph (4) of article 5, whichever is earlier.

(3) The day on which the limitation period commences is not included in the period.

(4) The operator may at any time during the running of the limitation period extend the period by a declaration in writing to the claimant. The period may be further extended by another declaration or declarations.

(5) A recourse action by a carrier or another person against the operator may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs if it is instituted within 90 days after the carrier or other person has been held liable in an action against himself or has settled the claim upon which such action was based and if, within a reasonable period of time after the filing of a claim against a carrier or other person that may result in a recourse action against the operator, notice of the filing of such a claim has been given to the operator.

Article 13

Contractual stipulations

(1) Unless otherwise provided in this Convention, any stipulation in a contract concluded by an operator or in any document signed or issued by the operator pursuant to article 4 is null and void to the extent that it derogates, directly or indirectly, from the provisions of this Convention. The nullity of such a stipulation does not affect the validity of the other provisions of the contract or document of which it forms a part.

(2) Notwithstanding the provisions of the preceding paragraph, the operator may agree to increase his responsibilities and obligations under this Convention.

Article 14

Interpretation of the Convention

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 15

International transport conventions

This Convention does not modify any rights or duties which may arise under an international convention relating to the international carriage of goods which is binding on a State which is a party to this Convention or under any law of such State giving effect to or derived from a convention relating to the international carriage of goods.

Article 16

Unit of account

(1) The unit of account referred to in article 6 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in article 6 are to be expressed in the national currency of a State according to the value of such currency at the date of judgement or the date agreed upon by the parties. The equivalence between the national currency of a State Party which is a member of the International Monetary Fund and the Special Drawing Right is to be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The equivalence between the national currency of a State Party which is not a member of the International Monetary Fund and the Special Drawing Right is to be calculated in a manner determined by that State.

(2) The calculation mentioned in the last sentence of the preceding paragraph is to be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for amounts in article 6 as is expressed there in units of account. States Parties must communicate to the depositary the manner of calculation at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession and whenever there is a change in the manner of such calculation.

FINAL CLAUSES

Article 17

Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 18

Signature, ratification, acceptance, approval, accession

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on ... and will remain open for signature by all States at the Headquarters of the United Nations, New York, until ... .

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 19

Application to territorial units

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may at any time substitute another declaration for its earlier declaration.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a State Party, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a State Party, unless it is in a territorial unit to which the Convention extends.

(4) If a State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 20

Reservations

No reservations may be made to this Convention.

Article 21

Effect of declaration

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 22

Entry into force

(1) This Convention enters into force on the first day of the month following the expiration of one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

(2) For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

(3) Each State Party shall apply the provisions of this Convention to transport-related services with respect to goods taken in charge by the operator on or after the date of the entry into force of this Convention in respect of that State.

Article 23

Revision and amendment

(1) At the request of not less than one third of the States Parties to this Convention, the depositary shall convene a conference of the Contracting States for revising or amending it.

(2) Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention is deemed to apply to the Convention as amended.

Article 24

Revision of limitation amounts

(1) At the request of at least one quarter of the States Parties, the depositary shall convene a meeting of a Committee composed of a representative from each Contracting State to consider increasing or decreasing the amounts in article 6.

(2) If this Convention enters into force more than five years after it was opened for signature, the depositary shall convene a meeting of the Committee within the first year after it enters into force.

(3) The meeting of the Committee shall take place on the occasion and at the location of the next session of the United Nations Commission on International Trade Law.

(4) In determining whether the limits should be amended, and if so, by what amount, the following criteria, determined on an international basis, and any other criteria considered to be relevant, shall be taken into consideration:

(a) The amount by which the limits of liability in any transport-related convention have been amended;

(b) The value of goods handled by operators;

(c) The cost of transport-related services;

(d) Insurance rates, including for cargo insurance, liability insurance for operators and insurance covering job-related injuries to workmen;

(e) The average level of damages awarded against operators for loss of or damage to goods or delay in handing over goods; and

(f) The costs of electricity, fuel and other utilities.

(5) Amendments shall be adopted by the Committee by a two-thirds majority of its members present and voting.

(6) No amendment of the limits of liability under this article may be considered less than five years from the date on which this Convention was opened for signature.

(7) Any amendment adopted in accordance with paragraph (5) shall be notified by the depositary to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 18 months after it has been notified, unless within that period not less than one third of the States that were States Parties at the time of the adoption of the amendment by the Committee have communicated to the depositary that they do not accept the amendment. An amendment deemed to have been accepted in accordance with this paragraph shall enter into force for all States Parties 18 months after its acceptance.

(8) A State Party which has not accepted an amendment shall nevertheless be bound by it, unless such State denounces the present Convention at least one month before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

(9) When an amendment has been adopted in accordance with paragraph (5) but the 18-month period for its acceptance has not yet expired, a State which becomes a State Party to this Convention during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by any amendment which has been accepted in accordance with paragraph (7).

(10) The applicable limit of liability shall be that which, in accordance with the preceding paragraphs, is in effect on the date of the occurrence which caused the loss, damage or delay.

Article 25

Denunciation

(1) A State Party may denounce this Convention at any time by means of a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at ..., this ... day of ... one thousand nine hundred and ..., in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

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UNITED NATIONS CONFERENCE
ON THE LIABILITY OF OPERATORS
OF TRANSPORT TERMINALS IN
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Vienna, 2-19 April 1991

BACKGROUND TO DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

1. The draft Convention on the Liability of Operators of Transport Terminals in International Trade, prepared by the United Nations Commission on International Trade Law (UNCITRAL), has its origins in work by the International Institute for the Unification of Private Law (UNIDROIT) on the topic of bailment and warehousing contracts. That topic was included in the work programme of UNIDROIT in 1960 in the context of combined transport operations, since particular problems arose in that context from the lack of uniform rules on the liability of persons into whose custody goods were entrusted before, during or after the actual transport of the goods (resolution number 9 of 22 April 1960 of the UNIDROIT Governing Council; annexed to the minutes of the 40th session of the Governing Council; UNIDROIT document C.D. XL UNIDROIT 1960).

2. On the basis of substantive studies of the subject prepared for UNIDROIT and enquiries made of Governments and of interested international organizations as to the desirability and feasibility of pursuing work on the topic, the UNIDROIT Governing Council, at its 56th session in 1977, decided to set up a Study Group to draw up uniform rules on the warehousing contract (minutes of the Governing Council, 56th session, page 35 in English version, page 38 in French version; UNIDROIT document C.D. 56th session UNIDROIT 1977). By 1982, the Study Group had prepared a preliminary draft convention on the liability of operators of transport terminals which, together with a explanatory report on the preliminary draft convention prepared by the Secretariat of UNIDROIT, was approved by the UNIDROIT Governing Council at its 62nd session in May, 1983 (minutes of the Governing Council, 62nd session, page 15 in English version, page 38 in French version; UNIDROIT document C.D. 62nd session UNIDROIT 1983).

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3. In the meantime, as a result of informal exploratory communications between the Secretariats of UNIDROIT and UNCITRAL, the Secretary of UNCITRAL informed the UNIDROIT Governing Council, at its 61st session (1982), of the interest of the Commission in the subject. That interest arose out of the close relationship of the subject with international conventions relating to the carriage of goods, and in particular the United Nations Convention on the Carriage of Goods by Sea, 1978, which had been elaborated by the Commission, as well as the relevance of the subject to the needs of a number of developing countries (A/CN.9/225 and Corr. 1 (French only), footnote 10). At its fifteenth (1982) and sixteenth (1983) sessions, the Commission was informed by the observer from UNIDROIT of the interest of his organization in co-operating with the Commission in the future work leading to the preparation of a draft convention on the subject (A/37/17, para. 105; A/38/17, para. 110).

4. The Commission decided at its sixteenth session to include in its programme of work the topic of international terminal operators, to request UNIDROIT to transmit its preliminary draft Convention to the Commission for its consideration, and to assign to a working group the task of preparing uniform rules on the topic (A/38/17, para. 115). The text of the preliminary draft Convention was placed before the Commission at its seventeenth session (1984), at which it decided to assign the task of preparing uniform rules to its Working Group on International Contract Practices, which was composed of all States that were members of the Commission (A/39/17, para. 113).

5. The Working Group devoted its eighth, ninth, tenth and eleventh sessions to the preparation of the uniform rules (A/CN.9/260, A/CN.9/275, A/CN.9/287 and A/CN.9/298). As the text of the uniform rules evolved within the Working Group, the scope of the rules, which, within UNIDROIT, had originally been restricted to warehousing, was expanded to cover additional types of terminal operations that are now performed in connection with the transport of goods. At its eleventh session, in January 1988, the Working Group decided to recommend to the Commission that the uniform rules be adopted in the form of a convention (A/CN.9/298, paras. 10 and 84), and approved a draft Convention on the Liability of Operators of Transport Terminals in International Trade (A/CN.9/298, para. 11 and annex I). Pursuant to a request of the Commission at its twenty-first session (1988) (A/43/17, para. 29), the draft Convention was transmitted to all States and to interested international organizations for comments.

6. At its twenty-second session, in 1989, the Commission had before it the text of the draft Convention, and reports of the Secretary-General containing a compilation of comments submitted by Governments and international organizations on the draft Convention (A/CN.9/319 and Add.1-5) and draft final clauses for the draft Convention (A/CN.9/321). After making various modifications to the text (A/44/17, paras. 11 to 225), the Commission adopted the draft Convention on the Liability of Operators of Transport Terminals in International Trade and transmitted it to the General Assembly with a recommendation that the Assembly should convene an international conference of plenipotentiaries to conclude, on the basis of the draft Convention, a Convention on the Liability of Operators of Transport Terminals in International Trade (A/44/17, para. 225). (The text of the draft Convention adopted by the Commission is set forth in A/44/17, annex I, and in A/CONF.152/5.)

7. The General Assembly, by its resolution 44/33 of 4 December 1989, decided to convene an international conference of plenipotentiaries at Vienna from 2 to 19 April 1991 to consider the draft Convention prepared by the Commission and to embody the results of its work in a convention on the liability of operators of transport terminals in international trade. (The relevant portions of resolution 44/33 are reproduced in A/CONF.152/1.)